No. 83-838

IN THE

Supreme Court of the United States

October Term, 1983

UNITED STATES OF AMERICA,
Petitioner

v.

PAUL B. LORENZETTI

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

1. Is not the right of the United States to assert a subrogation lien for benefits paid to a federal employee under the Federal Employees' Compensation Act, 5 U.S.C. §8132, against an employee's third-party recovery subject to the provisions of the State substantive law governing that third-party recovery?

2. May the United States assert a subrogation lien for medical expenses and compensation benefits paid to a federal employee under the Federal Employees' Compensation Act, 5 U.S.C. §8132, against the employee's third-party tort recovery in an action subject to the Pennsylvania No-Fault Insurance Law, 40 P.S. §1009.101 et seq., where the Pennsylvania No-Fault Insurance Law bars the employee from recovering such items as damages in his third-party tort action?

3. Is not the United States' right to assert a subrogation lien against an employee's third-party recovery in an action subject to the Pennsylvania No-Fault Insurance Law barred by that law's provision barring subrogation with respect to payments considered to be No-Fault benefits?

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STATEMENT

Respondent is a special agent for the Federal Bureau of Investigation. In November of 1977, and for several years both prior and subsequent thereto, he was stationed in Philadelphia. On November 21, 1977, while operating an automobile owned by petitioner, United States of America, he was involved in an automobile accident which occurred in the City of Philadelphia. As a result of that accident, he suffered personal injuries which necessitated extensive medical treatment and caused him to lose numerous days from work.

Pursuant to the provisions of the Federal Employees Compensation Act, 5 U.S.C. Sec. 8101 et seq., the United States of America paid the medical expenses incurred by the respondent and also paid him wage benefits for the period that he lost from his employment. These medical expenses and wage benefits (after deduction of an allowance for counsel fees which is not in dispute) totaled $1,620.24.

Subsequent to the accident, respondent instituted a third-party action in the Court of Common Pleas of Philadelphia County against the driver of the automobile that struck the automobile that he was operating at the time of the accident. Prior to that action being called for trial, counsel for defendant in the Court of Common Pleas action filed a motion for an order barring respondent from presenting evidence of medical expenses and wage losses as elements of damages in the third-party action on the grounds that such payments were no-fault benefits under the Pennsylvania no-fault insurance law and could not be proven or recovered in a third-party action against the driver of the automobile which struck his vehicle. The court indicated that this motion would be granted, as there was no dispute that the law of Pennsylvania barred recovery of such items as damages in a tort action subject to the no-fault law, see *Brunelli v. Farelly Bros.*, 266 Pa. Super. 23 (1979).

When counsel for defendant in the Common Pleas Court action filed the motion to preclude proof of the medical expenses and wage losses as damages, counsel for respondent advised the court that, notwithstanding the provisions of Pennsylvania law, the United States still was insisting upon asserting a subrogation lien against the proceeds of any recovery made in the tort action. The court thereupon signed an Order to Show Cause which was served on the United States to appear in the Court of Common Pleas and show cause why the motion to preclude should not be granted. Counsel for the United States appeared in that proceeding and submitted a brief but no formal order was entered. However, there was a conference in chambers in which the court indicated that the motion to preclude would be granted. Thereafter, plaintiff settled the third-party action for the sum of Eight Thousand Five Hundred Dollars ($8,500.00), with such settlement being negotiated on the understanding of all involved that medical expenses and wage losses would *not* be provable in the third-party tort action.

Following consummation of the settlement, respondent filed the instant proceeding seeking a declaratory judgment as to whether the proceeds of this settlement were subject to the subrogation lien being asserted by the United States of America.

Since the foregoing facts were not in dispute, the District Court viewed the proceeds of the settlement as having been paid *solely* on the basis of the pain and suffering caused to respondent as a result of the accident, and not in reimbursement of any wages or medical expense. Thus, the District Court noted (Pet. App. 14a):

> "Thus, had the case gone to trial, plaintiff's proof of damages would have been limited to non-economic losses as defined by the No-Fault Act. The parties settled the case, however, for $8,500.00. In view of the applicable provisions of the No-Fault Act, *the settlement must be attributed solely to plaintiff's claim for pain and suffering.*" (Emphasis supplied).

Notwithstanding that the settlement was attributed solely to the respondent's claim for pain and suffering, the district court ruled that respondent was obligated to reimburse the United States out of this recovery for any expenses incurred by the United States for medical expenses and compensation payments. On appeal, the Court of Appeals for the Third Circuit reversed, holding that Congress, in enacting the Federal Employee's Compensation Act, intended that all federal employees "be treated in a fair and equitable manner" (Pet. App. 7A), that the result for which the government was contending was manifestly unfair to federal employees who were not being treated equally with their state counterparts, and that there was no reason why the Act could not be interpreted in a manner analogous to the interpretation given the Pennsylvania Workmen's Compensation Act under which there is no subrogation in cases covered by the Pennsylvania no-fault insurance act (Pet. App. 9A).

SUMMARY OF ARGUMENT

1. The right of the United States to be reimbursed for compensation payments paid to a federal employee arises only where the federal employee has recovered "damages" from a third-party. The term "damages" as used in 5 U.S.C. 8132 has several possible meanings and the court below therefore correctly looked at the statute's purpose and legislative history in order to ascertain its correct meaning.

2. 5 U.S.C. 8131 and 8132 are subrogation provisions, with 5 U.S.C. 8132 merely providing a means for enforcing the right of subrogation created in 5 U.S.C. 8131. The government's rights under 5 U.S.C. 8131 and 8132 can rise no higher than the rights of the employee involved. Therefore, 5 U.S.C. 8132 cannot be interpreted as creating an independent right in the government to recover compensation payments from an employee where the employee was barred from recovering such amounts in a third-party action.

3. The government's interpretation of 5 U.S.C. 8132 as permitting it to recover medical expenses and wage loss benefits paid to an employee as workmen's compensation benefits out of the proceeds of an employee's third-party recovery when these items were not provable as damages in the third-party action, is discriminatory and manifestly unfair to federal employees, and the court below was correct in so ruling.

4. Provisions in state no-fault insurance laws limiting the right of individuals injured in motor vehicle accidents to recover damages in third-party litigation are valid and the subrogation provisions of the Federal Employees' Compensation Act, 5 U.S.C. 8131 and 8132 should be interpreted in a manner consistent with these laws.

ARGUMENT

The court below correctly ruled that the United States could not assert a lien against an injured employees' third party recovery for amounts which the employee was not entitled to recover in the third party action.

The Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq*. (hereafter FECA), establishes a comprehensive workers' compensation program for federal employees. In its essential structure and design (as relates to the instant litigation) it is similar to other workmen's compensation statutes, both state, *e.g*., Pennsylvania Workmen's Compensation Act, 77 Purdon's Statutes Annotated, Sec. 1 *et seq*., and federal, *e.g*., the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et. seq*. and while comprehensive, is neither more nor less comprehensive than these other statutory programs.

Essentially, FECA, like other compensation programs, provides for payment by an employer, in this case the United States, to an employee for certain losses suffered by the employee as a result of a work related injury, 5 U.S.C. 8102. These payments are referred to as benefits. The employee is entitled to receive these benefits immediately and without regard to who may have been at fault in causing his injuries. As the *quid pro quo* for the right to receive these benefits, the employee gives up his right to sue his employer (*i.e*., the United States), and the employer's obligation to pay compensation benefits becomes the employer's exclusive liability to the injured employee with respect to the injuries involved, 5 U.S.C. 8116(c).

Compensation statutes, including FECA, universally recognize that work related injuries may arise under circumstances where a third party (*i.e*., someone other than the employer) may be obligated to respond in damages to the injured employee. Absent some reason to limit the third party's liability to the injured employee, compensation statutes, including FECA, traditionally have preserved the right of the injured employee to seek recovery against such a third party tort-feasor.

In such a third party action, the damages recoverable by the employee usually, but not always (as in cases where no fault

or similar legislation is involved), include the employee's medical expenses and wage losses, items which duplicate payments the employee received as compensation benefits. If permitted to retain these amounts, the employee will have received a double recovery to the extent of his compensation benefits.

It is readily apparent in these circumstances that the negligent conduct of the third party tort-feasor, in addition to causing injury to the employee, also will cause harm to the employer who is called upon to pay compensation benefits to the injured employee by reason of the third party tort-feasor's negligent conduct. The universal solution in these circumstances has been to permit the employee to pursue his claim against the third party, while imposing a lien on that recovery in favor of the employer for amounts paid by the employer as compensation to the extent such payments are included in the damages recovered by the employee in his third party action. This compensation lien may arise from expressed statutory enactment[1] or by virtue of judicial decision,[2] but in either event always has been based upon the principle of subrogation, with the lien attaching to any duplicate recovery made in the third party litigation, *e.g.*, *Bloomer v. Liberty Mutual Insurance Co.*, 445 U.S. 74, 79, 63 L Ed 2d 215 221 (1980).

It is the implementation of the principle of subrogation through the vehicle of the compensation lien that the desired balance between the relative interests of the employer and the employee is achieved. The employee is assured recovery of an amount equal to his recoverable damages or his compensation benefits, whichever amount is *greater*, while the employer is assured of paying no more than an amount equal to its compensation liability, and may end up paying less to the extent that the

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1. *E.g.*, 5 U.S.C. 8131 and 8132 for FECA; Pennsylvania Workmen's Compensation Act, 77 Purdon's Statutes Annotated, Sec. 671, for Pennsylvania.

2. The Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, has no specific provision giving the employer a compensation lien, but the existence of a lien for compensation payments has been read into the Act by judicial decision, see *Bloomer v. Liberty Mutual Insurance Co.*, 445 U.S. 71, 79, 63 L Ed 2d 215, 221 (1980).

third party litigation is successful and repayment is made on the compensation lien.

It is this balancing of the relative interests of the United States, as an employer, and its employees which the government is trying to upset in the instant case, and, notwithstanding the government's criticism of the court below for supposedly altering the statutory balance between the federal government and its employees (Brief for the United States, page 5), it actually is the United States that is seeking to upset a long standing statutory balance, and, while so doing, to impose upon its employees a result which is manifestly unfair and clearly contrary to the historical approach of Congress in matters of this nature.

Stripped of all surplusage, the position of the government in the instant case is that 5 U.S.C. 8132 is not based on the principle of subrogation, but rather invests in the government the right to recover its compensation payments out of an employee's third party recovery, even where the payments for which reimbursement is sought are not recoverable in the third party action, Brief for the United States, f.n. 3, pp. 13-14. The government further contends, as a necessary predicate to its position, that modifications of state tort law under which the third party recovery is made, such as no-fault legislation, cannot affect the government's right to reimbursement of its compensation payments, and to the extent that such modifications would do so, they are invalid. The court below correctly rejected both these contentions.

Congress never has sought to dictate to the states with respect to matters of state tort law. Quite to the contrary, in waiving the defense of sovereign immunity and subjecting the federal government to liability under the Federal Tort Claims Act, 28 U.S.C. 2674 (1976), Congress consciously chose to utilize state substantive tort law, with its many variations, as a the basis for establishing liability against the federal government, see *Heusle v. National Mutual Insurance Co.*, 628 F.2d 833, 838 (3rd Cir. 1980). Nor did Congress, in the provisions in FECA providing for subrogation or assignment (whatever one may choose to call 5 U.S.C. 8131 and 8132), attempt to dictate or define the circumstances under which a third party recovery

could be made or, of significance to the instant case, dictate the measure of damages applicable in such a third party action. Rather, FECA, both in 5 U.S.C. 8131 and 5 U.S.C. 8132, refers only to ". . . circumstances creating a *legal liability* on a person other than the United States to pay damages . . ." (Emphasis supplied), with such legal liability being determined by other substantive law provisions.

No area of the law has been more the subject of continuing growth and change, whether by reason of judicial decision or statutory enactment, than has been the field of tort law. Recent years have witnessed both the expansion of tort remedies in some areas and the contraction of tort remedies in others. One need only refer to the field of product liability law and the substitution of comparative negligence for contributory negligence as examples of expanding tort liability, and limitations on the liability of charitable institutions[3] and no-fault insurance laws, such as involved here, as examples of the narrowing of tort liability. If any thing is certain in the field of tort law, it is the certainty of change. Yet the basic principle with respect to compensation liens has remained the same — the compensation lien is subject to whatever limitations are imposed on the employee's third party right of recovery, and if a particular item of damages cannot be recovered in the third party litigation, then the employer cannot assert a lien for such payment as the employer's rights can rise no higher than the rights of the employee from they are derived.[4]

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3. As an example, under New Jersey law, the liability of a charitable institution, including hospitals, for accidental injury is limited to $10,000.00, see NJSA 2A: 53A-8.

4. The government argues in its brief, f.n. 3, pp. 13-14, that 5 U.S.C. 8132 is not a subrogation provision, but rather creates an "independent right of reimbursement from whatever amount" the employee is able to recover in his third party action. The government further argues in its brief, text at p. 15, that its interpretation is supported by the provision in 5 U.S.C. 8131 authorizing the government to require the employee to assign his third party action to the government. These arguments are difficult to comprehend. Clearly, the United States can no more require an employee to assign a claim he does not have than it can be subrogated to a claim that does not exist. 5 U.S.C. 8131 and

Under the Pennsylvania No-Fault insurance law involved in the instant case, a person injured in an automobile accident no longer is entitled as a *matter of right* to sue a negligent third party to recover damages for his injuries, see 40 Purdon's Statutes Annotated, Sec. 1009.301(a). Rather, the injured person is limited in the first instance to the recovery of no-fault benefits. If the person was injured in the course of employment so as to be entitled to receive workmen's compensation benefits, then the receipt of such workmen's compensation benefits is deemed the receipt of no-fault benefits.[5] *Only* if the nature of the injuries suffered are such as to meet certain threshold requirements is the injured person entitled to bring suit against a negligent third party, see 40 Purdon's Statutes Annotated, Sec. 1009.301(a), and, if such suit is brought, the damages recoverable are *limited* to those losses *not* covered by the receipt of no-fault benefits, or workmen's compensation benefits, as the case may be. Amounts received as no-fault benefits may not be recovered in such third party action and subrogation by the party paying no-fault benefits is specifically barred, see 40 Purdon's Statutes Annotated, Sec. 1009.111(a), *Brunelli v. Farelly Bros.*, 266 Pa. Super 23 (1979).

The no-fault insurance law works a fundamental change in the legal remedies available to persons injured in motor vehicle accidents. It replaces the right to sue a negligent third party for *all* damages resulting from a motor vehicle accident with a two pronged remedy consisting of no-fault benefits plus the right to sue for those damages not covered by no-fault benefits (assuming the threshold requirements are met). Under the Pennsylvania no-fault system an injured party is guaranteed *both* his no-

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8132 merely provide alternative means by which the government can *enforce* its compensation lien. The nature and amount of the lien depends on the employee's substantive right of recovery.

5. The statutory language is rather convoluted. The no-fault act provides that payments received as workmen's compensation benefits are to be *subtracted* from the employee's basic loss in calculating his net losses, 40 Purdon's Statutes Annotated, Sec. 1009.206(a). The effect of this subtraction usually is to reduce the net loss to zero, thus giving the no-fault carrier the benefit of any payments made as workmen's compensation.

fault benefits *and* the right to bring suit for a limited third party recovery in lieu of the right to bring suit for an unlimited third party recovery.

It is in the context of the foregoing provisions of the Pennsylvania no-fault insurance law that the position of the government in the instant case can best be understood and the manifest unfairness of this position to which the court below referred (Pet. App. 7a), readily becomes apparent. Under the government's position in the instant case, a federal employee injured in a motor vehicle accident subject to the Pennsylvania no-fault insurance law would *not* be entitled to retain his no-fault benefits; rather, he would have to pay his no-fault benefits back to the government out of a third party recovery which did *not* include them. Thus, a federal employee would recover substantially less (measured by the amount of his workmen's compensation benefits) than would a non-federal employee injured under exactly the same circumstances. In addition, a federal employee in the State of Pennsylvania, or in any other state with similar no-fault legislation, would recover *less* than a federal employee in a state which does not have no-fault legislation and in which medical expenses and full wage loss are recoverable items of damages in third party litigation. Such a result hardly fulfills the Congressionally mandated role of the government as a model employer (Pet. App. 8a).

Ignoring the harshness of its position and the patently discriminatory treatment of federal employees which its position embodies, the government argues that the "plain meaning" of 5 U.S.C. 8132 requires the interpretation for which it is arguing. Nothing could be more incorrect. Indeed, to the extent that 5 U.S.C. 8132 can be said to have any "plain meaning" it is a meaning which is far different from that being argued by the government.

5 U.S.C. 8132 provides in pertinent part:

> "If an injury or death for which compensation is payable . . . is caused under circumstances *creating a legal liability* in a person other than the United States to pay *damages*, and a beneficiary entitled to compensation from the

> United States for that injury . . . receives money or other property in satisfaction of *that liability* as the result of suit or settlement . . . shall refund to the United States the amount of compensation paid by the United States . . ." (Emphasis supplied).

The statute, by its terms, applies to situations where there is a "liability" on a person *other* than the United States to pay "damages." These two key words — "liability" and "damages" — are not specifically defined. The term "liability" is part of the phrase "under the circumstance creating a legal liability" and clearly refers to situations where the events under which the death or injury occurred give rise to a *cause of action* against a party *other* than the United States.

The content of the term "damages" is not so easily ascertained. One possible interpretation is that it is being used in a general sense, referring to *all* damages that might be recovered as part of the "cause of action" to which the death or injury for which compensation was paid gave rise. While this is, perhaps, the most literal interpretation of 5 U.S.C. 8132, it also is the most unacceptable one, for a cause of action arising from events under which a particular death or injury might have occurred, might include a variety of damage claims, including claims for property damage.

Consider the situation where a government employee is driving his own automobile in the course of his employment and the automobile is damaged in a compensable accident, or the employee is wearing a watch which is damaged in the accident. These claims for property damage would be part of his cause of action arising from the events giving rise to the payment of compensation, yet no one would seriously contend that Congress intended that any recovery the employee might make for these items of property damage should be applied to repaying the government's compensation lien.[6]

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6. At several places in the government's brief there is language which suggests that the government is contending that it is entitled to be reimbursed out of recoveries for property damage. Thus, at page 14 of the government's brief it is stated that the right to reimbursement "encompasses *all* damages re-

The government's position in the instant case must fail because it is predicated on an alleged "plain meaning" of 5 U.S.C. 8132, when, in fact the statute has no plain meaning. It has no plain meaning because the word "damages" as used in the statute has at least three possible meanings, all of which differ significantly in their consequences. These three possible meanings are: (1) "Damages" means *all* damages, including property damages recoverable as part of the cause of action against the third party. (2) "Damages" means those items of damages awarded for bodily personal injury arising from the cause of action against the third party. (3) "Damages" refers to those items of damage for bodily personal injury which are recoverable in the action against the third party for which compensation benefits were paid.

Given these three possible reasonable meanings of the word "damages" as use in the the statute, the "plain meaning" rule is of little help and resort to other means of ascertaining legislative intent is both necessary and appropriate. The court below adopted interpretation (3), approaching the problem of statutory interpretation in a manner which was both scholarly and impeccably correct. The court looked to the purposes which Congress sought to accomplish with the enactment of FECA, *cf. Rose v. Lundy*, 455 U.S. 509, 517 (1982), to the published legislative history, and to the historical development of no-fault legislation as it related to FECA.

From the historical viewpoint, the court below noted that 5 U.S.C. 8132 was enacted *prior* to the advent of no-fault legislation and, therefore, the unique problems created by no-fault

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NOTE — *(Continued)*

covered from third parties," (Emphasis supplied), at page 16 the statement is made that the right to reimbursement extends to "any third party recovery, *regardless* of the elements of damages that make up that recovery," (Emphasis supplied), and at page 17, "Section 8132 requires an employee to reimburse the government from *any* damage award," (Emphasis supplied). We do not understand the government to actually be contending that it is entitled to be reimbursed out of property damage recoveries. At the same time, however, this loose phraseology in the government's own brief serves to further demonstrate the futility of trying to read some "plain meaning" into 5 U.S.C. 8132.

legislation in implementing 5 U.S.C. 8132 could not have been considered by Congress when this provision was last amended. (Pet. App. 6a-7a). Accordingly, it was incumbent upon the court to analyze the purposes underlying the statute in order to ascertain its proper scope.[7]

The court then took note of the legislative history which disclosed the when Congress last amended FECA in 1973, it specifically stated that its purpose was to insure ". . . that injured or disabled employees of all covered departments or agencies . . . be treated in a *fair and equitable* manner," citing S. Rep. No. 416, 93rd Cong., 1st Sess., *reprinted in* (1974) U.S. Code Cong. & Ad. News 5341-43. (Emphasis supplied) (Pet. App. 7a). Applying this "fair and equitable" test, the court below then concluded (for the reasons previously set forth in this brief):

> "The result now sought by the government converts a law which was originally intended to assist federal employees into one that is manifestly unfair to those same individuals. In light of the recent growth of no-fault laws throughout the country and in view of the inherent hardship that will evolve upon those federal employees who, per chance, are subject to no-fault statutes, it is incumbent on this court to reject the government's wide-ranging interpretation of §8132."

The court below then concluded by referring to the expressed hope of Congress that FECA would help the government in achieving its goal of becoming a "model employer", see S. Rep. No. 1124, 93rd Cong., Sess., (1974) U.S. Code Cong. & Ad. News 5341, (Pet. App. 8a), and stated in summary:

> "There is absolutely no reason in either the legislative history of FECA or in the interpretive regulations promulgated by the Secretary of Labor, as to why FECA cannot be viewed in an analogous fashion (referring to the Pennsylva-

7. The fact that no-fault legislation was not in existence, nor even on the horizon, when 5 U.S.C. 8132 was last amended (in 1966) is a further and highly persuasive reason for not placing undue emphasis on any claimed "plain meaning" attributed to the statutory language.

nia decisions precluding subrogation with respect to basic loss benefits under the no-fault statute, see *Pierce v. Kinsey*, 18 D&C 3rd 531 (1981)). *Such a reading of §8132 would put federal employees on an equal footing with their counterparts in private industry and most importantly, it would allow for a fair result under the terms of the statute,*" (Emphasis supplied).

In an effort to bolster its position, the government cities case holding that awards for non-economic lossess, such as pain and suffering, may be applied to satisfy compensation liens, *e.g.*, *Haynes v. Rederi A/S Aladdin*, 362 F.2d 345 (5th Cir. 1966), cert. denied, 385 U.S. 1020 (1967), and other cases cited at page 9 of the Brief for the United States. However, this argument misses the mark, for in the cases cited, unlike the instant case, the items making up the compensation lien, medical expenses and wage losses, *were provable items of damages in the third party litigation*. In *Haynes v. Rederi A/S Alladdin*, supra, as a result of a 50% reduction for comparative negligence, the employee's third party recovery was reduced substantially, and he sought to pass on a portion of that reduction to the employer through a proportional reduction of the compensation lien. This was properly denied because the employee *did* receive the benefit of his full third party recovery, albeit a reduced recovery because of his own negligence. Despite the reduction for comparative negligence, the recovery that he was awarded did include his medical expenses and wage loss *to the extent that he was entitled to recover these items*. In the instant case, however, by virtue of the provisions of the no-fault law, respondent's third party recovery did *not* include his medical expenses and wage loss.

United States v. Rogers, 658 F.2d 296 (5th Cir. 1981), cited at page 18 of the Brief for the United States, is distinguishable for a totally different reason. There payments were made to an employee under the Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.*, with respect to injuries incurred in an automobile accident. However, it does not appear that these payments were in lieu of no-fault payments, and under Georgia law

which was applicable to that case, an employee is entitled to collect *both* no-fault benefits *and* workmen's compensation benefits *at the same time*, unless the employer is obligated to pay for the no-fault benefits, see Official Code of Georgia, Annotated, Vol. 25, Title 33-34-8. It does not appear that the effect of the repayment of the lien in *United States v. Rogers*, supra, operated to deprive Rogers of the benefit of a no-fault recovery, as would the government's position in the instant case.

Finally, the government's argument that the effect of the decision below would be to impose unreasonable administrative burdens on the government is disingenuous. An unfair or discriminatory interpretation of a law is not to be countenanced simply because it is easier to administer than a fair and non-discriminatory interpretation. Moreover, it is difficult to see how the government's proposed interpretation will make any appreciable difference in administering the Act because the third party right of recovery of federal employees still will depend on the various laws of the 50 states and those responsible for administering FECA still will have to gain and maintain familiarty with these laws.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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